

Message Text

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PAGE 01 STATE 070415
ORIGIN AF-10

INFO OCT-01 ISO-00 DODE-00 L-03 CIAE-00 INR-10 NSAE-00
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DRAFTED BY AFRREG:HILLEBRANDT:SN
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INFO CSAF WASHINGTON DC
SECDEF

C O N F I D E N T I A L STATE 070415

E.O. 11652: GDS

TAGS: MASS, PCAT, KE

SUBJECT: KENYAN F-5 DELIVERY--LIABILITY FOR LOSS ENROUTE

1. DEPARTMENT AND DOD ARE CONCERNED THAT THE KENYAN'S MAY NOT FULLY UNDERSTAND THEIR LIABILITY FOR LOSS OR DAMAGE TO THE F-5S DURING THE DELIVERY PHASE. TO OUR KNOWLEDGE, THE KENYAN'S HAVE NOT ARRANGED FOR COMMERCIAL INSURANCE AGAINST THE POSSIBILITY OF A LOSS. TO AVOID A MISUNDERSTANDING, AND RESULTANT HARD FEELINGS AFTER THE FACT, REQUEST YOU DISCUSS THIS MATTER WITH THE MOD AS SOON AS POSSIBLE, DRAWING ON THE FOLLOWING:

2. THE DEPARTMENT OF DEFENSE IS CONCERNED THAT THE
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KENYAN MOD MAY NOT FULLY UNDERSTAND ITS LIABILITY FOR LOSS OR DAMAGE TO KENYAN F-5 AIRCRAFT IN CASE OF AN ACCIDENT DURING THE DELIVERY PHASE. WHILE THE PROBABILITY OF A C-5 ACCIDENT, OR AN ACCIDENT WHILE LOADING OR UNLOADING THE AIRCRAFT IS VERY LOW, IT DOES EXIST, AND UNDER THE GENERAL CONDITIONS OF SALE WHICH ARE PART OF THE LETTER OF OFFER AND ACCEPTANCE, AGREED TO BY BOTH OUR GOVERNMENTS, THE

UNITED STATES COULD NOT ACCEPT LIABILITY FOR ANY LOSS.
THIS PROVISION IS COVERED SPECIFICALLY IN PARAGRAPH C OF
THE CONDITIONS OF SALE, WHICH ARE INCLUDED ON THE BACK OF

THE FORM ISI3, LETTER OF OFFER AND ACCEPTANCE. THE
REASON FOR THIS ARRANGEMENT IS THAT UNDER THE PROVISIONS
OF THE ARMS EXPORT CONTROL ACT THE DOD MAY NOT EXPEND
DOD FUNDS FOR FOREIGN MILITARY SALES PURPOSES. INDEMN-
IFICATION OF ANY MATERIAL AGAINST LOSS THEREFORE, WOULD
VIOLATE THE PROVISIONS OF THIS ACT. THE VALUE OF THE
FIRST SHIPMENT IS \$21.439 MILLION INCLUDING 4 F-5E,
2F-5F, 2 J85-21 ENGINES, PLUS MISCELLANEOUS SPARE PARTS
AND SUPPORT EQUIPMENT. THE SECOND SHIPMENT IS VALUED AT
\$19.005 MILLION INCLUDING 6 F-5E, 2 J85-21 ENGINES, PLUS
MISCELLANEOUS SPARES AND SUPPORT EQUIPMENT. COMMERCIAL
INSURANCE IS AVAILABLE. FOR EXAMPLE, IN MARCH 1976, THE
GOVERNMENT OF ETHIOPIA INSURED A SIMILAR C-5 SHIPMENT TO
ADDIS ABABA OF 8 F-5E WITH A VALUE OF \$24 MILLION FOR
\$48,000, WHICH PROVIDED COVERAGE AGAINST ALL PERILS
EXCEPT WAR, RIOT, OR CIVIL COMMOTION. THE DOD WOULD BE
HAPPY TO REFER THE EMBASSY OF KENYA IN WASHINGTON TO
SEVERAL SUCH UNDERWRITERS WITH THE UNDERSTANDING THAT
ANY AGREEMENT WOULD BE CONCLUDED DIRECTLY WITH NO
RESPONSIBILITY ON THE PART OF THE DOD.

3. FYI. DOD HAS CONTACTED THE FIRM THAT INSURED
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THE ETHIOPIAN SHIPMENT WHICH HAS INFORMED US THAT
COVERAGE CAN BE ARRANGED ON SHORT NOTICE (TO COVER
LOSSES ENROUTE PLUS LOADING AND UNLOADING). THE PREMIUM
WOULD BE APPROXIMATELY \$42,000 ON THE FIRST FLIGHT AND
\$38,000 ON THE SECOND FLIGHT. IF THE KENYANS NEED
ASSISTANCE FROM DOD, THEY SHOULD ASK THEIR EMBASSY HERE
TO CONTACT COLONEL HILLEBRANDT, OASD/ISA, X697-2874.

4. IT IS, OF COURSE, POSSIBLE THAT THE KENYANS HAVE
ALREADY ARRANGED INSURANCE. HOWEVER, WE FELT WE OWED IT
TO THEM TO BRING THIS TO THEIR ATTENTION AS A MATTER OF
SOME URGENCY SINCE ITEMS ALREADY CRATED AND SCHEDULED
FOR LOADING INTO C5 MARCH 27 FOR MARCH 28 TAKEOFF. VANCE

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Message Attributes

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Decaption Date: 01 jan 1960
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